

PATENT COOPERATION TREATY

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From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION
(PCT Rule 66)

To: KOWAL, Elzbieta et al. POLSERVICE Sp. z o.o. P.O. Box 335 00-950 Warszawa POLOGNE		POLSERVICE Sp. z o.o. BIURO OWP Warszawa 2004-07-12 L.p. K1782 Skierowano		Date of mailing (day/month/year) 07.07.2004	
Applicant's or agent's file reference KI78ZP3849			REPLY DUE within 3 month(s) from the above date of mailing		
International application No. PCT/PL 03/00023		International filing date (day/month/year) 17.03.2003		Priority date (day/month/year) 27.08.2002	
International Patent Classification (IPC) or both national classification and IPC B01L3/02					
Applicant PZ HTL SPLKA AKCYJNA et al.					



- This written opinion is the **second** drawn up by this International Preliminary Examining Authority.
- This opinion contains indications relating to the following items:
 - ☒ Basis of the opinion
 - ☐ Priority
 - ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - ☒ Lack of unity of invention
 - ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - ☐ Certain documents cited
 - ☐ Certain defects in the international application
 - ☐ Certain observations on the international application
- The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4.
 For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
 For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
- The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 27.12.2004

Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Smith-Hewitt, L Formalities officer (incl. extension of time limits) Ipinazar, P Telephone No. +49 89 2399-8131	
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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-9 as originally filed

Claims, Numbers

1-10 as originally filed

Drawings, Sheets

1/1 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

IV. Lack of unity of invention

1. In response to the invitation (Form PCT/PEA/405) to restrict or pay additional fees, the applicant has:

- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☐ neither restricted nor paid additional fees.

2. ☒ This Authority found that the requirement of unity of invention is not complied with for the following reasons and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees:

see separate sheet

3. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this opinion:

- ☐ all parts.
- ☒ the parts relating to claims Nos. 1,3,5,7,9 .

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1,3,5,7,9 (No)
Inventive step (IS)	Claims	-
Industrial applicability (IA)	Claims	1-9 (Yes)

2. Citations and explanations

see separate sheet

1. Re: Items IV and V

- 1.1 The applicants have mentioned in their letter of response that the invention relies on calculation, based on a polynomial, of a preliminary volume value, based on a counted pulse number. The signals are transmitted as pulses generated in the course of rotation, a system of two sensors displaced (from ?) each other making it possible to identify rotational directions and define whether they are to be added or subtracted from each other. When added to this value a correction from a correction table depending on the counted pulse number and rounding it in a predetermined manner, this value is displayed.

This method is also described in the present application in the bridging paragraph between p.6 and p.7. Essential hereby is that the pulses are counted by an OPTICAL system which monitors the movement of the encoder dial. However, none of this is mentioned in the present claim set.

It therefore appears that essential features of the invention are lacking from the present claims, certainly with respect to D1. Article 6 PCT is contravened.

- 1.2 Instead, the claims broadly describe a method with the following steps:

- a. An aspiration table is input into the memory system as a standard set of points.
- b. The adjustment screw of a manual pipette is turned to regulate the length of a plunger stroke.
- c. The position of the screw is detected
- d. A corresponding signal is sent to the electronic system
- e. The signal is compared with the standard table points and the value of the aspired liquid volume is assigned.
- f. The aspired liquid volume is displayed on the display.

- 1.3 The method steps a-f do not actually describe a method for pipette calibration but rather a method for pipette use. The requirements for clarity are not met (Article 6 PCT).

- 1.4 Furthermore, the above steps a.-f. may be read onto the disclosure of D1 (US 5998218 A, col.2, l.50 - col.3, l.40 and col.11, l.39 - col. 12, l.16 in conjunction with Fig.11). A "calibration map" may be considered to be equivalent term to an "aspiration table" or "aspiration function". Fig. 3 in conjunction with col.5, l.40 -

col.10, l.12 shows the technical features of the device. Claims 1,3,5,7 and 9 cannot be considered novel in the sense of Article 33(2) PCT.

- 1.5 The additional subject matter of claims 2 and 6 and 4 and 8 represent further developments of the display function of the pipette which would seem obvious to the person skilled in the art (Article 33(3) PCT). Furthermore, these claims lack unity (Rule 13 PCT) a posteriori, since the groups of claims (2 and 6) and (4 and 8) do not share common technical features. No comment is therefore made to these claims at present.
- 1.6 Document D2 (PL 325795 A), cited by the applicant, is also novelty destroying for the present claims 1, 5 and 9. Although a translation of this document has not been provided, the description of the document on p.3 of the present application suffices as proof and in fact has virtually identical wording. The scope of claims 1, 5 and 9 may be read onto this description. [It must be noted that a "multinomial" is also a set of points.] Furthermore, lacking proof to the contrary, it must be assumed that the optical method of generating and using calibration pulses summarised in point 1.1 above is disclosed therein.

2. Further remarks

- 2.1 If it could be demonstrated that the method of calibration described by the applicants on p.3, final paragraph of their letter of reply and summarised in point 1.1 above were new and inventive over D2, and if the essential features of this method were included in an amended set of claims, a positive IPER could be envisaged.
- 2.2 Reference numerals should be included in the claims (Rule 6.2b).